

Papers Circulated.

The following papers, having been previously circulated among the members, were taken as read :—

1. Memo of further amendments to the Registration Bill sent in by Mr. Krishnaswamy Rao.
2. Petition from the Editor of the 'Malankara Edavaga Patrika' commenting on the amendment *re* optional registration of endorsements on mortgage-deeds.
3. Amendment to the Civil Procedure Code Amendment Bill sent in by Mr. Krishnaswamy Rao.

A Malayalam petition from Raman Narayanan of Vaikam containing suggestions on the Registration Bill, having been received too late for circulation in time, was read out at the Council.

CIVIL PROCEDURE CODE AMENDMENT BILL.

Mr. Krishnaswamy Rao proposed :—" substitute the words ' any Native State under the suzerainty of Her Majesty the Queen Empress of India ' for ' any foreign State ' in sections VIII, IX and X. "

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Krishnaswamy Rao moved that the Bill as amended be passed.

Mr. Muthunayagom Pillay seconded the motion.

The Bill was accordingly passed by the Council.

REGISTRATION BILL.

With reference to the amendment proposed by Mr. Krishnaswamy Rao at the last meeting, regarding the optional registration of ' endorsements on mortgage-deeds acknowledging the payment of the whole or any part of the mortgage money and any other receipt for payment of money due under a mortgage, when the receipt does not purport to extinguish the mortgage,' Mr. Thanu Pillay said :—

" I beg to oppose the amendment.

" The chief object of registration is, in the words of Sir Arthur Hobhouse, ' to give certainty to titles and to prevent the operation of fraudulent and secret transactions by which a man's right in the property which he has acquired may be defeated.' The history of legislation on this subject in British India shows a steady, if gradual, extension of the system of registration to all important transactions relating to property, and, if the system is not co-extensive with all transactions, it is due, not to any difference of opinion as to its usefulness, but to the practical difficulty of attaining the object fully. In the course of the discussion on the Registration Amendment Bill which afterwards became Act III of 1877, the Honorable Mr. Bayley observed that he ' did not think anybody would dispute that it was very desirable, if it were possible, that every written instrument which passed in any shape should be registered.....The real difficulty was that practically a perfect system of registration would be impossible, at least for very many years to come.' I have quoted these remarks to show that the classification of instruments into compulsory and optional for purposes of registration is not based upon any transcendental or immutable principle, but merely upon considerations of practical convenience. In British India, as we all know, instruments affecting immovable property in which the value of the interest affected is less than 100 Rs. are not compulsorily registrable, whereas, in the Bill before us, all such instruments are brought within the compulsory group. From the figures given in the last Administration Report it appears that 60 per cent of the instruments relating to immovable property presented for registration in 1069 were of value not exceeding 100 Rs. The same will, I believe, more or less be the proportion of such instruments in British India. Why is so large a proportion of instruments excluded from the compulsory class there? Because, I take it, of the practical inconvenience, on administrative, financial and possibly other grounds, of providing the requisite machinery for doing the work without entailing undue hardship on the people. In British India, the average area to a Registry office is 307 square miles against 160 square miles in this country.

"The above considerations will show that the conditions of the two countries, so far as facilities for registration are concerned, are not similar. The question before us, therefore, has to be considered on its own merits. In other words, we have to consider whether the advantages of the proposed measure counterbalance the disadvantages. In the first place, it should be borne in mind that the provision which the amendment is intended to modify has been the law in this country all these years, and it has not been alleged that any complaint has been received about its hardship. The Bill has been before the public for several months and no representation has been received against the provision. On the contrary, a very sensible letter has been received from the Editor of the 'Malankara Idavaga Patrika' and a petition from one Raman Narayanan of Vaikam protesting against the amendment. I would commend to the consideration of the Council the excellent reasons set forth in these papers against the amendment.

"The learned mover of the amendment gives the following reasons in support of the amendment.

(1) As the payment of a debt evidenced by a document legally inadmissible may be proved by independent oral evidence, and if the payment is proved, the debt and with it the collateral security are discharged, the amendment would only facilitate the proof of payment by the *direct* evidence of endorsements and receipts, which under the existing law would, if not registered, be not admissible.

(2) The provision requiring the registration of such endorsements and receipts would put the parties to great expense, loss and inconvenience.

In regard to the first point, I beg to observe that as documentary evidence is generally regarded as better than oral evidence it is important that every possible safeguard should be provided against the creation or fabrication of spurious documents. The law, I believe, does not, in this country, require that transactions relating to immovable property should be in writing. Even oral sales are not unknown. But we all know what poor chance a man whose claim rests on an oral contract has against one whose claim is evidenced by a formal deed. Thus, if a man knows that an endorsement or a receipt if not duly registered will not be received in evidence, he is not, unless he is extraordinarily clever or extremely negligent, likely to take the risk of proving the discharge of the debt by parol evidence. I shall presently show that once the safeguard provided by registration is removed, a wide door will be opened for all manner of spurious and fraudulent transactions. It appears to me therefore expedient that the *direct* evidence of endorsements and receipts which does not possess the guarantee of genuineness should be altogether excluded.

"I entertain some doubt as to whether proof of payment of the debt operates as an extinguisher of the right created by the mortgage i.e. as a discharge of the collateral security. In recounting the various ways by which the right secured by a mortgage terminates, one of which is the discharge of the claim to which the right is accessory, Holland observes: 'Under a system of registration it is further necessary that the charge be removed from the books.' If payment evidenced by a receipt operates to extinguish the mortgage, I do not understand the object of the last words of the amendment 'when the receipt does not purport to extinguish the mortgage.'

"Referring to the proceedings of the Viceregal Legislative Council relating to Act VII of 1886, I find that the clause which forms the subject of the present amendment was introduced by the Select Committee to which the Bill which afterwards became the Act above named had been referred. From the report of the Select Committee it appears that the provision had been recommended to and was adopted by them on 'grounds of convenience.' In moving that the report of the Select Committee on the above Bill be taken into consideration the Honorable Mr. Ilbert said: 'There is a recent decision of the Allahabad High Court to the effect that receipts for payment of mortgage money are compulsorily registrable. Almost all the authorities whom we have consulted are agreed that, whether this interpretation of the Act is right or wrong, it cannot be enforced without causing great practical inconvenience.' The above clause had accordingly been added to the Bill. We thus see that the object of the provision was to obviate practical inconvenience and we should consider whether the above consideration applies with sufficient force to the circumstances and conditions of this country.

"This leads us to the second of the grounds above adverted to viz. the allee-

inconvenience. It is not clear what constitutes the inconvenience. Two considerations are mentioned in the observations of the learned mover (1) a debt is often discharged by a number of instalments and if, at each time a payment is made, the parties are required to secure a registered voucher for the same, they will be put to great inconvenience: (2) the parties who have to register the documents often live or carry on business far away from the Registry offices.

"As regards the first ground I venture to say that instances of mortgage debt being paid by a number of instalments are extremely rare. Part-payments of simple debts are not rare. In hypothecations too, there may be cases of payment by instalments. In mortgages proper, and in this country almost all the mortgages are mortgages with possession, part-payments of mortgage debts are, so far as my enquiries go, almost unknown.

"As for the distance, I have already pointed out that the average area to a Registry office is 160 square miles, which means, presuming (as we may well do) that the Registry offices are centrally situated with reference to their areas of jurisdiction, that a man has to travel about $6\frac{1}{4}$ miles to get to a Registry office.

"A careful study of the figures given in para 327 of the latest Travancore Administration Report would show that, excluding the hilly and unpopulated tracts, the average area is considerably less. Thus we have a Registry office within easy reach of almost every village and, if I mistake not, the policy of Government is to open more offices. I am sure that in the vast majority of cases the parties reside within the jurisdiction of the Registrar. 88 per. cent of the documents presented for registration in 1969 were registered on the day of presentation. These facts would, I believe, show that the inconvenience to which the parties are likely to be put is at any rate not such as calls for any relief. As regards the expense and loss, I do not know whether the present rate of fees charged is too high. I have already observed that no representation, so far as I am aware, has been received from the people on this subject. This, however, is not a safe index of the burden not being heavy. The loss of revenue involved, as the learned mover has observed, may not perhaps be considerable, though I should observe that if the amendment is passed the actual loss will be not the Registration fee alone but *that* plus the stamp duty on releases and re-conveyances of mortgage. Endorsements of the kind referred to are exempted from stamp duty and if such endorsements are declared to have the effect of extinguishing the mortgage, very few will go to the expense of executing release deeds. I am tempted to remark that deeds evidencing an extinguishment of mortgage are fitter subjects of taxation than those creating an encumbrance as the former often indicates solvency in both parties while the latter implies insolvency in respect of one of the parties. But I do not lay any stress at all on the financial aspect of the question. If it is deemed necessary and expedient to lighten the burden on the public, the proper course, it strikes me, would be to move for a reduction of the fees.

"Let us now turn to the reverse of the medal. As already pointed out, the bulk of the transactions relating to immovable property in this country are of the nature of mortgages with possession. Whatever the strict legal import, the people do not look upon a mortgage as a mere debt. The bulk of the immovable property of many families consist of mortgage properties.

"It cannot be denied that Registration gives notoriety to the deed and affords great safeguards against fraud; and I feel that the amendment will open a door for false transactions. The masses in this country are as ignorant as they are litigious. The signatures of almost all women (except among the better classes) and of many men are mere strokes. There is thus ample facility for forgery. In Marumakathayam families, the temptation as well as opportunity for fraud are very great. In South Travancore especially where by the impact of the Makathayam system and other causes the Marumakathayam system is in a tottering state, there being very few families where the several branches and indeed members of the same branch are not in a state of perpetual warfare, the provision that an unregistered endorsement or receipt will operate to extinguish the right secured by the mortgage will prove simply ruinous. Thefts of documents which now are very rare will become rife. If the original document is lost, the mortgagor has only to hire a few witnesses to defraud the mortgagee. And last, but not least, the amendment would defeat one of the chief objects of registration viz to enable all persons interested to find out the exact position of the property with which they are about to deal.

"I trust the foregoing considerations will show that the disadvantages likely to result from the proposed amendment more than outweigh the possible advantages and I earnestly hope that the Council will see that it is expedient to let well alone."

Mr. Nagam Iyer agreed with Mr. Thann Pillay in opposing the amendment.

Mr. Muthunayagom Pillay, in suggesting a middle course, observed :—

"The motion to exempt from compulsory registration all receipts and endorsements acknowledging payment, in whole or part, of the money due under mortgage and hypothecation deeds, was made at the last meeting of the Council. Since then, I have discussed the subject with some of my friends at the bar and have consulted authorities.

"I do not for a moment dispute the position, that it is certainly *more safe* to allow a debt due under a registered instrument to be extinguished by another registered instrument rather than by any writing which has not received the publicity and advantages of formal registration. But what I contend for is, that considerations of public *convenience* should play an important part in the making of laws and that such considerations should induce the Legislature to depart from those general principles which, having regard to safety only, dictate the enactment of hard and fast rules. The Legislature should further take into account the common practice of the people of the country ; and any usage that is voluntarily adopted by a majority of buyers and sellers should be accepted as being in accordance with public convenience. As the refusing to recognise any usage and the compelling of parties to adopt a cumbrous method would materially hamper the transactions of the money-market, the Legislature should enact laws which give validity to existing practices while, at the same time, it tries to a certain extent to guard against the commission of fraud or forgery. I will refer you, Gentlemen, by way of illustration, to the law relating to Negotiable Instruments. The rigid rules that govern contracts affecting personal property have been considerably relaxed in connection with Negotiable Instruments in order to meet the exigencies of business, as it would be most embarrassing if every taker of such instrument was bound, at his peril, to conform to the general rules of the law of contract.

"Applying these principles to the matter in hand, I venture to assert that the practice in this country with regard to hypothecation transactions is to discharge them by the simple return of the original deed with or without an endorsement of payment ; and the executing of formal registered releases is the exceptional procedure adopted by a limited few only. So also, in the case of payment of interest or of any portion of the hypothecation money, the invariable practice is to make an endorsement of payment on the deed itself ; and no person ever dreams of registering such endorsements. With regard to mortgages with possession, no doubt, generally, part-payments are not made and payment of interest is unnecessary. But even when full payment is made, I have often come across cases in which parties have such confidence in the honesty of their neighbours that they do not resort to registration for extinguishing the mortgage-debt, but rest content with taking back the original deed with or without any endorsement. A clause that I have frequently observed in many of the mortgage deeds of this country, is to the effect that on the payment of the mortgage-money the deed is to be returned and the property surrendered. (There is no provision whatever for the reconveyance of the property by the mortgagee.) I do not mean to assert that separate release deeds or Oloomoories are never executed in this country. All I say is, that they are not very common. I believe that for every hundred mortgage deeds that are executed in this country, there are not thirty release deeds that are registered ; and the other seventy are discharged if at all, without going through the formality of registration.

"As the learned Chief Justice pointed out at the last sitting of the Council, the allowing of the making of such endorsements meets public convenience too. Consider the amount of inconvenience, expense and loss to a man having to go to the Registrar's office and dance attendance there for hours, every time that he has to secure a registered voucher for every pie that he pays on account of the principal or interest due under a registered deed. We should try to facilitate the transaction of business, and not attempt to stifle existing practices by insisting that all endorsements of payment are compulsorily registrable and, if not so registered, are absolutely worthless as evidence in a court of law.

"I am of opinion, therefore, that endorsements of payment made on the original deed itself, should be optionally registrable, and should not be brought within the class of compulsorily registrable documents. The Madras and Bombay High Courts have held, that under the old Registration Act of 1877 (which corresponds with the existing law in Travancore), endorsements acknowledging part-payment, do not require registration. (Vide I. L. R. III Madras p. 53, I. L. R. IV Bombay p. 235, and I. L. R. V. Bombay p. 181). No doubt the Allahabad High Court took a different view of the matter, in the case of Dalip v. Durga Prasad, and in a later case in the sixth volume of their reports. But it was to undo the mischief of this very view that the Amendment Act of 1886 was passed in British India. The Hon. Mr. Ilbert in proposing the Amendment Act said:—"There is a recent decision of the Allahabad High Court to the effect that receipts for payment of mortgage money are compulsorily registrable. *Almost all the authorities whom we have consulted are agreed that, whether this interpretation of the Act is right or wrong, it cannot be enforced without causing great practical inconvenience.*" Pray, note the words that I have emphasized in the above extract.

"Passing next to the subject of *separate* receipts acknowledging payment of mortgage money, I am at one with those who think that they should be brought within the class of compulsorily registrable instruments. In the first place, the system of extinguishing registered debts by unregistered separate receipts, is very rare in this country; and secondly, the system, if allowed, is liable to abuse and opens a wide door for the commission of fraud.

"For instance, an innocent assignee of a mortgage right could often be defrauded by the collusion of the original mortgagee and mortgagor, who might with the greatest facility get up any number of separate receipts between themselves. The mortgagor may play into the hands of the assignor of the mortgage-right, and after the assignment, come out with his receipts and defeat the assignment.

"Gentlemen, you will observe then, that I draw a distinction between endorsements and separate receipts. Before taking an assignment an assignee would naturally ask for the original mortgage deed, but he could hardly be expected to ferret out the existence of separate receipts. In the former case, if he gets the deed and finds no endorsements on it, he may well rest assured that the debt is still unextinguished; and a search of the registry is all that is wanted to make his assurance doubly sure as to the safety of his assignment. But if we once allow the system of separate receipts, the only way by which a would-be assignee could satisfy himself as to the non-extinguishment of the debt, is by appealing to the mortgagor for private information. The mortgagor may take it into his head to withhold information, or by collusion with the mortgagee, may supply false information, and without his goodwill, no safe assignment could take place. This would seriously hamper the transfer of mortgage interests from hand to hand, and would also endanger the safety of such transactions.

"I would therefore make separate receipts registrable compulsorily while I would make endorsements registrable optionally."

Mr. Ramanatha Rao who had seconded the amendment at the last meeting spoke as follows:—

"Mr. President and Gentlemen,

I feel no hesitation in supporting the amendment proposed by the learned Chief Justice. It would be useless to take up the time of the Council in recapitulating the pros and cons so exhaustively and ably put forth by my friends Messrs. Thanu Pillay and Muthunayagom Pillay. The amendment proposed was adopted by the Viceregal Council after a consensus of opinion on the part of the various authorities consulted in that behalf by the Government of India. I do not see any ground to suppose that the amendment proposed would affect prejudicially the people of this State with reference to the mortgage transactions entered into by them. To the objection that the conditions of Travancore differ from those of the British Provinces, I have only to point out to you that Malabar is, in all essential respects, similarly situated. It has not been pointed out by the High Court of Madras or the authorities of the province of Malabar that the change in the Registration Law which has been now in force for more than half a dozen years has affected injuriously the mortgage transactions entered into by the people of Malabar. In reply to the argument that the people of Travancore have not asked for the amendment proposed,

nor has the want of it been found to be a desideratum in the past, in the working of the Registration Regulation, I should like to point out to you that all receipts and endorsements in payment of the mortgage amount would fall under Clause 4 of Section 10 namely, "any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, but merely creating a right to obtain another document which will when executed, create, declare, assign, limit or extinguish any such right, title or interest." Therefore, without the amendment proposed, it would be perfectly legal for a mortgagor to seek to prove any writing evidencing the payment of the mortgage debt and thereby praying the court to compel the mortgagee to execute a release. If this be not conceded and the Registration Law be worked with the rigidity with which my friend Mr. Thanu Pillay said it should be worked, then every payment of interest made on account of a hypothecation debt would be invalid without registration. Certainly, I do not understand the Council to go to that length. The main object of the proposed amendment is simply to bring the law into conformity with existing usage and the practice of the Courts."

The President in opposing the amendment said :—

"I fully share the views expressed by Mr. Thanu Pillay and feel that the amendment would do more harm than good. I would add a few observations and, to make the matter clear, I may as well begin with some illustrations which must readily appeal to practical experience.

"A, a mortgagor goes on paying to the mortgagee in instalments the mortgage amount, each payment being endorsed on the mortgage deed. The instrument which must of course be in the hands of the mortgagee is lost by accident and with it the best evidence of the several part-payments. So far as the mortgagee is concerned, he sets up a plea of loss and refers to the Registrar's office for an attested copy of the deed. His interest is secure and there is nothing to prevent him from denying *in toto* the payments made to him and the mortgagor is simply at his mercy. Harassing litigation and recrimination will be the result. In such cases, again, it is possible for an unscrupulous mortgagor to turn the tables upon the mortgagee. The former gets information about the loss. He has not paid back a chukram. But he alleges full payment duly acknowledged by endorsements on the document lost. Having referred to the possibility of the parties taking undue advantage of each other, even in the case of a *bona fide* loss, it were superfluous to dwell at length upon the pernicious consequences which must flow from the various means—collusion, fraud, forgery &c. which will be employed on either side for successfully setting up a false plea of 'loss.' In Malabar Tarwads where conflicting interests are not a rare feature, such cases are sure to arise under the amendment now proposed.

"The effect of the amendment upon transactions with third parties has also to be considered. When a man proposes to purchase the property from the mortgagor, he has no other means of satisfying himself as to how far the encumbrance has been cleared than by referring to the endorsements on the mortgage deed. This, in itself, is no small inconvenience, and when the deed is lost, the difficulty and the scope for fraud are by no means inconsiderable.

"The fundamental principle of the law governing the registration of assurances is that every transaction relating to immovable property shall be registered, whether it involves the creation or extinction of a right.

"The principle is recognised in the proposed amendment. Repayments of mortgage amounts are intended to be freed from compulsory registration, whether they are full or partial, short of the cancelment of the right, which of course implies a concession to the principle above stated. In other words, receipts of repayments in the shape of endorsements on the original mortgage deed when they do not purport to extinguish the mortgage right are to be exempt from registration and to be accepted as evidence of such payments.

"The object of the amendment is to save inconvenience to parties who, as the law stands at present, are obliged to appear at the Registrar's office every time a repayment is made and acknowledged. In securing this object, it is not denied that the guarantee which the law now affords, so far as the repayments go, will no longer exist. I do not here put forward any considerations regarding the effect on the public revenue from this source. I would leave that point behind for the present.

though any sacrifice of fiscal interests where it leads to no commensurate advantage to the public must be allowed due weight in judging the merits of the question.

"As I observed in the course of discussion at the last meeting, mortgages form the bulk of the transactions relating to immovable property in the country. They are 60 per cent of the registrations affecting this class of property of which the larger proportion, 38 per cent, is covered by mortgages with possession. But between possession-mortgages and mere hypothecations, the proportion stands at 63.4 and 36.6 per cent respectively. From the figures furnished by the Huzur Registrar in regard to the releases of both description of mortgages brought up for registration during the first half of the current Malabar year, I find the total number of documents to be 5,038, of which the releases bearing on possession mortgages form 67 per cent, while those of mere hypothecation deeds are not more than 33 per cent. Thus the transactions relating to mortgages with possession are by far larger than those of the latter class.

"The amendment under discussion applies to both the above classes of mortgages. I can claim some knowledge and experience of the actual dealings among the Travancore people as regards mortgage transactions and I may venture to point out that it is very rarely or never that repayments under possession mortgages are made or accepted in instalments; nor have I known a single instance where full repayment of the mortgage amount takes place without immediate extinction of the mortgage right and formal re-conveyance of property. It is not in the nature of things that the mortgagee would accept part payments of an amount advanced and recognised in a document executed under the guarantee provided by the law nor would the mortgagor be blind to the risk he runs in making such payments outside the Registration Act. So, virtually the amendment would have very little effect in the way of saving inconvenience so far at least as the larger proportion of releases is concerned. As regards hypothecation deeds too, these remarks apply though it may be in a less degree. Anyhow, cases of repayment by means of endorsements even under the latter class must be fewer than otherwise.

"The present Registration Regulation has been in operation for 27 years and it does not appear that there has been any hardship for want of the proposed provision. Nor did the necessity for the provision ever strike the Council when the Bill passed through all its stages. What is of still greater significance is that the publication of the Bill has provoked no comments anywhere in the country pointing to any inconvenience on this score. These circumstances warrant at least a presumption that the evil which it is now sought to remedy, if it exists at all, is hardly appreciable. In measuring the expediency of changing a given law which has been found to work well for more than a quarter of a century, we should have something more tangible. Individual inconvenience there may be. It is incidental to every general measure of State administration. The question with the Legislature should be, whether the inconvenience is so great and serious as to outweigh the interests which it is the principle and policy of the existing law to safeguard. If the registration of instruments affecting immovable property is declared no longer compulsory, a good deal of public inconvenience will be obviated. But this inconvenience, we all know, is nothing compared with the solid benefits secured by the compulsory procedure.

"The repayment of mortgage amounts by instalments is, as I have already observed, of rare occurrence; at least, that it comes within the range of ordinary transactions is open to question. This cannot be said of payments which are advanced over and above the original mortgage amounts as Porakadom and ~~aparakadom~~. Every such payment, however small, must be brought under registration. The inconvenience on this account must affect by far a larger number of individuals than in cases of part-payment. But it is a necessary evil. As with payments, so with repayments. Both concern vested rights and both must be governed by precisely the same principle.

"That a repayment may be fully made and yet the right may still vest in the mortgagee, unless formally extinguished, is a position which is hardly borne out by actual experience.

"It seems to be at best a legal fiction which, if created as implied in the amendment, would have a mischievous tendency towards fraud and litigation.

"It may be that parties to mortgage transactions resort to adjustments by means of endorsing repayments. So, parties do sometimes manage without any written contracts. These, however, are exceptions to the normal state of things, mere make-shifts which do not help the question at issue."

Mr. Krishnaswamy Rao said.—"I have no objection to adopt the suggestion of Mr. Muthunayagom Pillay if the Council are prepared to accept it. I cannot refrain from remarking that, so long as the Law of Evidence is what it now is, the rejection of the amendment proposed by me will not *per se* prevent the Courts from giving effect to payments made in discharge of mortgage debts, although such payments may be evidenced by *unregistered* vouchers. The sole object of the amendment I have proposed is to place beyond doubt the admissibility of the vouchers in evidence and thereby facilitate the proof of payments by *documentary* evidence which is certainly superior to proof by *oral* evidence."

The amendment was put to the vote and lost: the result of the votes being as follows:—

For	Against
Mr. Krishnaswamy Rao.	The President.
Mr. Ramanatha Rao.	Mr. Nagam Iyer.
	Mr. Thanu Pillay.

(Note. Mr. Muthunayagom Pillay supported only a portion of the amendment.)

Mr. Krishnaswamy Rao moved the following amendment:—

(1) "Omit the explanation to section 10, and in the first para of section 17, the words 'or in the case of a certificate of sale granted by a Civil Court under section 313 of the Civil Procedure Code, within one year from the date on which the sale is confirmed;' and add the following as section 84: 'Every Court granting a certificate under section 313 of the Code of Civil Procedure shall send a copy of such certificate to the Registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate, is situate, and such officer shall file the copy in Book I.' " He observed:—

"As the Bill now stands, certificates of sale granted by the Civil Courts under section 313 of the Civil Procedure Code are treated as private documents and in view of the fact that there is often much delay in obtaining the certificates, a period of one year is prescribed for their registration. The British Indian Act treats them as *orders* of Court and removes them from the documents whose registration is compulsory, and directs the Courts to send copies of them to Registration offices to be filed in Book 1 *for the information of the public*. The British Indian system seems to me to be the best.

"The certificate of sale granted by a Court contains a judicial declaration of the fact of sale, and as such, it is in the nature of an order of a Court. There is no reason why it should be treated differently from the decrees and other judicial orders whose registration is optional. If these certificates are treated as documents whose registration is compulsory, a question may arise as to whether the Courts can grant the application of the purchaser for delivery of the property to him, before the registration of the certificate; for, according to section 42 of the Bill, no effect can be given to a transaction evidenced by an instrument whose registration is compulsory, before its registration. But section 313 of the Civil Procedure Code entitles the purchaser to the possession of the property *from the date of the confirmation of the sale*, and the Courts are bound, under section 315 of the said Code, to deliver possession of the property on his application even if such application be made before the certificate is registered. There is thus a conflict between the Registration Regulation and the Civil Procedure Code. The Bill gives one year's time for registration of sale certificates from the date of the confirmation of the sale. From a statement which I place on the table, you will see that the delay in granting sale certificates often exceeds one year. Cases are not rare in which there has been a delay of 5, 6 and even 12 years. For this delay the Courts

are not solely responsible. The parties have to apply for certificates and supply the stamp of the value prescribed by Article 11 of the Schedule appended to the Stamp Regulation. Under Article 152 of the Schedule appended to the Limitation Regulation, the purchaser may apply for a certificate within 3 years from the date of the confirmation of the sale. The Courts cannot therefore find fault with him for not applying for the certificate of sale within what they may consider a reasonable time. If the certificates of sale are treated as documents whose registration is compulsory, the Civil Procedure Code should have to be amended so as to preclude the Civil Courts from delivering to the purchaser the property purchased by him before the registration of the certificate. I would prefer the simple and rational method adopted in British India, on mature consideration, to any amendment of the Civil Procedure Code to bring it into harmony with the provisions of this Bill. As in the case of memoranda of decrees, a fee may be levied from the purchaser on the copies of certificates sent to the Registration office, to recoup the loss which the removal of sale certificates from the compulsory class will involve. The copies filed will give the public the information they want."

(Seconded by Mr. Muthunayagom Pillay and carried.)

Mr. Krishnaswamy Row, in introducing amendments 2 to 17, said:—

"The following amendments are necessary to give full effect to sections 14, 15 and 16, to supply a few obvious defects and to remove some self-evident errors."

(2) "Substitute the words 'sections 29 and 31' for the words 'section 29' in section 69, para 4.

(Seconded by Mr. Ramanatha Rao and carried.)

(3) "Omit in section 29 the words 'which is capable of being so presented' "

(Seconded by Mr. Thanu Pillay and carried.)

(4) "Add the following to section 7 as 2nd para:—'when any Registrar is absent or when his office is temporarily vacant, the local Sub-Registrar shall be in charge of his office pending the orders of the Director of Registration' "

(Seconded by Mr. Ramanatha Rao and carried.)

(5) "Insert the words 'any officer who is empowered to register documents' between the words 'public' and 'or' in the 3rd line of clause (b) of section 26' "

(Seconded by Mr. Nagam Iyer and carried.)

(6) "Substitute the words 'Sub-District' for the word 'District' in section 60."

(Seconded by Mr. Thanu Pillay and carried.)

(7) "Insert the words 'or on the ground that the person by whom the document purports to be executed has not appeared before the Sub-Registrar after being summoned' in the 1st line of section 66 after the word 'execution' "

(Seconded by Mr. Muthunayagom Pillay and carried.)

(8) "Omit in section 17 the words 'or in the case of a copy of a decree or order, within 180 days from the day on which the decree or order was made.' "

(Seconded by Mr. Ramanatha Rao and carried.)

(9) "Substitute in section 36 the words 'Book 7' for 'Book 5'; in section 38, the words 'Book 6' for 'Book 4' and for section 43 the following:—'The following books shall be kept in the several offices hereinafter named—that is to say—

In all Sub-Registry offices :

Book 1. 'Register of non-testamentary documents relating to immovable property.'

Book 2. 'Memoranda of decrees and orders of Courts received under section 15.'

Book 3. 'Miscellaneous Register.'

Book 4. 'Record of reasons for refusal to register.'

Book 5. 'Memoranda of decrees and orders of Courts received under section 14.'

Book 6. 'Register of Wills.'

In the offices of Registrars :

Books 4 and 6 and also Book 7—'Register of Deposits of Wills.'

In Book 1 shall be entered or filed all documents registered under sections 10 and 11 which relate to immovable property and are not Wills.

In Book 3 shall be entered all documents registered under section 11 which do not relate to immovable property."

(Seconded by Mr. Ramanatha Rao and carried.)

(10) "Insert the following after 2nd para in section 47.

"In the case of Memoranda of decrees or orders filed in books 2 and 5, Index No. 1 shall also contain the names of plaintiff and defendant and where there are more plaintiffs or defendants than one, the names of the first plaintiff and the first defendant with the words 'and others' following."

(Seconded by Mr. Ramanatha Rao and carried.)

(11) "Add the words 'and memoranda of decrees and orders filed in Books 2 and 5 after 'Book 1' in the 3rd para of section 47"

(Seconded by Mr. Muthunayagom Pillay and carried.)

(12) Substitute in para 5 of section 47 the words 'Book 6' for the words 'Book 4.'

(Seconded by Mr. Muthunayagom Pillay and carried.)

(13) "Substitute in section 49 the words 'Books 1, 2, 4 and 5' for the words 'Books 1 and 2' and the words 'such books' for the words 'Book 1' in the same line."

(Seconded by Mr. Muthunayagom Pillay and carried.)

(14) "Substitute in para 2 of section 49 the words 'Book 6' for the words 'Book 4.'

(Seconded by Mr. Muthunayagom Pillay and carried.)

(15) "Substitute in para 3, section 49, the words 'Books 3 and 6' for the words 'Books 3 and 4.'

(Seconded by Mr. Muthunayagom Pillay and carried.)

(16) "Substitute in line 6, section 56, the words 'or if the executing party fails to do so within a fixed time, the Registering officer may allow the party presenting the document to authenticate the copy by his signature', for the words 'or of the party presenting the document.'"

(Seconded by Mr. Muthunayagom Pillay and carried.)

(17) "Add, as section 85, the following:--'Every Memorandum received under section 14 and filed in Book 5 shall be pagged and numbered according to the order of receipt. The year, number, volume and page of the book in which the Memorandum is filed shall be entered in the margin of that part of the book in which the document affected by such Memorandum is registered. The number and year of the suit as well as the name of the Court which forwarded the Memorandum shall be entered. When any such Memorandum shall relate to immovable property which is wholly or partly situate in a district or sub-districts other than the sub-district in which such Memorandum has been received, the Sub-Registrar receiving the same shall send a copy thereof to the Sub-Registrar or Sub-Registrars within whose sub-district or sub-districts the whole or any part of such property is situate, who shall, on receiving such copy, follow the procedure prescribed in the first part of this section. Every Memorandum received under section 15 shall be filed in Book 2.'"

(Seconded by Mr. Muthunayagom Pillay and carried.)

Mr. Krishnasway Rao continued:—

"The Council have been favoured with some other suggestions for the amendment of the Bill now before us. As I have not adopted them, I think it to be my duty to give the reasons for the course I have adopted. One of these suggestions is that section 26 should contain a provision for the examination of witnesses on commission. This section relates to powers-of-attorney. As the validity of the agent's act entirely depends upon the authenticity of the power, the Select Committee thought that the duty of ascertaining their genuineness should be cast upon the Registrars. This class of documents are very few. No serious inconvenience is likely to be felt by the absence of the provision relating to commissions.

"The 2nd suggestion is that sections 14, 15 and 16 should be omitted. After a long debate, a full meeting of the Council with one dissent, re-introduced these sections into the Bill in conformity with the existing practice. There are no fresh grounds on which a re-consideration of this subject may be urged on the attention of the Council."

"The 3rd and last suggestion is, that the Bill should exempt from compulsory registration leases for a term not exceeding 5 years which secure an annual rental of less than 50 Rs. Within the last 25 years, every lease for a term of more than one year, however small the rent reserved may be, has been registered under the Regulation now in force. People know well the requirements of the law on the subject. Complaints of hardship have not reached the responsible authorities. It is feared that the exemption suggested may introduce a laxity in the execution of an important class of contracts which, considering the litigious character of the country, ought to be avoided."

Mr. Krishnaswamy Rao proposed that the Bill come into force from the 1st day of Vrichigom 1071.

Mr. Nagam Iyer seconded the motion.

Carried.

Mr. Krishnaswamy Rao proposed that the Bill as amended be passed.

Mr. Thanu Pillay seconded the motion.

The Bill was accordingly passed by the Council.

SHUNGRASOBYER,
President.